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FILE NO: 46001.000278

July 20, 2001

By Hand

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: ***WorldCom, Cox, and AT&T ads. Verizon***
CC Docket Nos. 00-218, 00-249, and 00-251

Dear Ms. Salas:

Enclosed for filing on behalf of Verizon, please find four copies of Verizon's Response to AT&T's Supplemental Comments in Support of its Motion to Compel Answers to AT&T's First Set of Data Requests

Please do not hesitate to call me with any questions.

Very truly yours,

Kimberly Newman / cwc

Kimberly A. Newman

cc: Dorothy T. Attwood (8 copies)(by hand)
David Levy, Esq.
Mark A. Keffer, Esq.

No. of Copies rec'd 013
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition of AT&T Communications of	)	
Virginia Inc., Pursuant to Section 252(e)(5)	)	CC Docket No. 00-251
of the Communications Act for Preemption	)	
of the Jurisdiction of the Virginia	)	
Corporation Commission Regarding	)	
Interconnection Disputes With Verizon	)	
Virginia Inc.	)	

VERIZON VIRGINIA INC.'S RESPONSE TO AT&T'S SUPPLEMENTAL COMMENTS IN SUPPORT OF ITS MOTION TO COMPEL ANSWERS TO AT&T'S FIRST SET OF DATA REQUESTS

On July 10, the Commission conducted a Status Conference during which it heard argument on AT&T's Motion to Compel Answers to AT&T's First Set of Data Requests. In a letter issued the following day, the Commission ordered AT&T to "provide additional, specific argument on the relevance of its various requests for information relating to Verizon operations outside of Virginia . . . [and] the actions of Verizon's advanced services affiliates." July 11, 2001 Letter from Jeffrey Dygert (CC Docket Nos. 00-218, -249 and -251).

On or about July 13, AT&T filed its Supplemental Comments in this matter. Rather than providing additional support for its motion, AT&T devotes most of its memorandum to reiterating the arguments that it has already advanced. For the reasons set forth below, Verizon Virginia's objections to AT&T's First Set of Data Requests should be sustained and AT&T's Motion to Compel should be denied.[1]

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[1] AT&T's complaint about the specificity of Verizon Virginia's objections is specious. Counsel for Verizon discussed with counsel for AT&T the specific nature of Verizon Virginia's refusal to answer the data requests at issue. Obviously, AT&T correctly understood those objections, as it has addressed each in its two memoranda in support of the instant motion.

I. AT&T May Not Compel Discovery From Corporate Entities That Are Not Parties To This Proceeding.

As it did in its initial memorandum in support of its Motion to Compel, AT&T vents its frustration over the undisputed fact that Verizon Virginia Inc., Verizon Advanced Data Inc. ("VADI") and Verizon Advanced Data Virginia Inc. ("VADVA") are all separate and distinct corporate entities. No amount of protest by AT&T will change the fact that only Verizon Virginia is a party to this proceeding subject to discovery. *See* 47 CFR § 1.325(a) ("A party to a Commission proceeding may request ***any other party*** except the Commission to produce [documents]. . . ." (emphasis added); 47 CFR § 1.323(a) ("Any party may serve upon ***any other party*** written interrogatories. . . .") (emphasis added).

AT&T continues to suggest to the Commission that Verizon Virginia has "pierced" the corporate veil between it and VADI/VADVA. As explained in its earlier memorandum in opposition to the Motion to Compel, however, AT&T's attempt to invoke the doctrine of "piercing the corporate veil" is misplaced. That extraordinary procedure, which can only be based on extensive factual findings, is one used to impose liability, not to determine the scope of discovery. Moreover, the facts alleged by AT&T in support of this argument are of little or no relevance to a court's determination to pierce a corporate veil.

AT&T suggests that the Commission may find that Verizon Virginia, VADI and VADVA are all one in the same, because these entities are under the "common control" and ownership of Verizon Communications, Inc. Even if true, such facts fall well short of the showing necessary to justify the piercing of a corporate veil. Rather, Virginia courts will pierce the corporate veil to impose liability on an appropriate party only when the moving party proves that "the corporation was a device or sham used to disguise wrongs, obscure fraud or conceal crime." *Perpetual Real Estate v. Michaelson Properties*, 974 F.2d 545, 548 (4th Cir. 1992)

(citations omitted). AT&T neither offers, nor could offer, proof meeting that standard that would justify the Commission ignoring the corporate distinction between Verizon Virginia and VADI or VADVA. To the contrary, Verizon formed VADI and VADVA as separate data affiliates based upon this Commission's BA/GTE Merger requirements.

II. The Pennsylvania Public Utility Commission, Not Verizon, Commanded VADI's Appearance At The Pennsylvania § 271 Proceedings.

As AT&T points out, VADI did participate in Verizon Pennsylvania's § 271 proceeding. However, as indicated in AT&T's quote from the Pennsylvania Commission's July 3, 2000 letter, VADI appeared at the direction of the Pennsylvania Commission, not Verizon Pennsylvania. Further, once at the hearing, VADI provided its own witnesses and was represented by separate counsel.

Thus, this is not a situation where Verizon affiliates use VADI when it works to their advantage and hide behind VADI when it does not. Per the Commission's BA/GTE Merger requirements, VADI exists and operates as a "structurally separate" entity.

III. While Verizon Has Initiated A Request For Reintegration, VADI and Verizon Remain "Structurally Separate."

Verizon has requested that the FCC accelerate Verizon incumbent telephone companies' right to provide advanced services directly, without using the separate advanced services affiliate required by the Bell Atlantic-GTE Merger Order. On May 31, 2001, a Public Notice was released establishing the comment and reply comment cycle. Comments were filed June 14, 2001 and reply comments were filed on June 28, 2001. Once the Merger Order's separate data affiliate requirement is no longer effective, Verizon Virginia will need to seek any necessary regulatory approval from the Virginia State Corporation Commission. Thus, while Verizon has initiated a request for reintegration of VADI, that process is far from over.

IV. AT&T's Reliance On The *ASCENT* Case Is Misplaced.

AT&T's reliance on *ASCENT v. Federal Communications Commission*, 235 F.3d 662 (D.C. Cir. 2001), is misplaced. In *ASCENT*, the D.C. Circuit Court did not address whether an ILEC that was the sole party to a § 252 arbitration had to respond to discovery requests concerning services being provided by a separate data affiliate. Instead, the court found that a separate data affiliate was a successor of the newly-merged SBC/Ameritech ILEC, even though the Commission ordered SBC/Ameritech to create the separate affiliate as part of the Commission's merger requirements. *Id.* at 667. Consequently, SBC/Ameritech's separate data affiliate was subject to the same resale and unbundling requirements as SBC/Ameritech.

The present dispute between Verizon Virginia and AT&T is much more narrow. The issue before the Commission is not whether VADI is a successor to Verizon and, therefore, subject to the requirements of the Act. The issue before the Commission is merely the scope of permissible discovery in a case in which VADI is not a party.

V. Information Relating To VADI's Provision Of Advanced Services Is Not Relevant To This Proceeding.

What VADI or VADVA provide, or plan to provide, in the way of advanced services simply is not relevant to the issues raised in this arbitration.[2] Neither VADI nor VADVA are parties to this proceeding and Verizon Virginia does not, and cannot, offer advanced services. As it has stated several times before, Verizon Virginia will, in accordance with its proposed interconnection agreement and applicable law, supply AT&T with the means to offer advanced

[2] This fact does not change because information related to VADI arguably may be within the "custody or control" of a common corporate parent of VADI and Verizon Virginia.

services. Nevertheless, what VADI or VADVA deploy or plan to deploy has no bearing on the terms of the agreement between AT&T and Verizon Virginia.[3]

In its Supplemental Comments, AT&T sets forth each discovery request *seriatim*, and argues that each is relevant to such issues as "the size of the DSL market" (request 1-2); "deploy[ment of] advanced services equipment" (requests 1-8, 17 & 35); resale of advanced services (requests 1-18 &19); and plans for future deployment of NGDLC architecture (requests 1-20, 22, 23, 25-27). Any and all of these questions may be appropriate in a proceeding with an ILEC that provides advanced services. Verizon Virginia, however, does not.

Consistent with the D.C. Circuit Court of Appeals' decision in the *ASCENT* case, AT&T may petition VADI or VADVA directly for interconnection under § 251(c). Whether it does so or not, the fact remains that neither VADI nor VADVA are parties to this proceeding. Thus, the discovery requests at issue are neither relevant nor likely to lead to the discovery of admissible evidence.

VI. Information Unrelated To Verizon Virginia's Operations In Virginia Is Not Discoverable.

Information not related to the market for telecommunications services in Virginia is neither relevant to the issues raised in this proceeding nor likely to lead to the discovery of admissible evidence. As explained in its initial opposition to AT&T's Motion to Compel, the Virginia SCC so ruled on precisely this issue in the *Joint Petition of Bell Atlantic Corporation*

[3] AT&T compares apples to oranges when it argues that Verizon Virginia has asked questions identical to those that it has refused to answer. Verizon Virginia's requests related to advanced services focus either on a specific argument advanced by AT&T (*e.g.*, request 2-2 & 5) or AT&T's suggestion that it needs a Verizon-owned splitter to provide DSL services (*e.g.*, 2-7, 9, 10, 11, 24-29).

and GTE Corporation for Approval of Agreement and Plan of Merger, Case No. PUA980031 (January 25, 1999).

What AT&T fails to acknowledge is that Verizon Virginia does not seek to avoid producing policies, plans or other such documents that are relevant to operations in several states, including Virginia. Rather, Verizon Virginia maintains only that it need not produce information that is not related to its operations in Virginia.

AT&T, on the other hand, urges the Commission to approve discovery throughout the entire Verizon footprint so that it can evaluate the whether CLECs are being provided "nondiscriminatory access to advanced services equipment on commercially reasonable rates, terms and conditions." (See requests 1-3, 5, 7, 9, 11, 13 and 21). Such questions are well beyond the scope of this case. As the Commission pointed out in the July 10 Status Conference, this is not an arbitration to determine national rates, terms and conditions applicable to any and all Verizon affiliates. This is an arbitration over the interconnection of AT&T with Verizon Virginia only. Thus, the proper scope of discovery is the footprint of Verizon Virginia, not its parent or affiliates.

VII. Conclusion

For all of the reasons set forth above, the Commission should sustain Verizon Virginia's objections and deny AT&T's Motion to Compel Answers to AT&T's First Set of Data Requests.

Respectfully submitted,

Karen Zacharia / by permission EWC

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Attorneys for Verizon

Dated: July 20, 2001

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing Response To AT&T's Supplemental Comments In Support Of Its Motion To Compel were served electronically and by overnight mail this 20th day of July, 2001, to:

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